



---

*Wisconsin State Senate*

**Senate Committee on Labor, Elections and Urban Affairs  
Testimony of Senator Jim Sullivan, April 14, 2010**

Good afternoon and thank you Chairman Coggs for allowing me to speak on behalf of SB 669, misclassification of workers in the Drywall Finishing and Painting Trades.

Drywall finishing and painting are the two trades most affected by worker misclassification. Current law does not address this inequity. SB 669 will define the terms "independent contractor" to accurately reflect that an individual involved in painting or drywall activities should be known as an employee.

Currently, many unscrupulous employers misclassify employees as independent contractors as a way to increase profits and bypass paying benefits. Employers who have independent contractors, not employees, do not pay into worker's compensations funds, unemployment insurance or social security, federal and state taxes.

Workers hired under the status of independent contractor are hurt by not being eligible for worker's compensation benefits, should they be injured. Workers are forced to bear the burden of paying their own taxes and are not given the protection of unemployment insurance, as the rest of our workforce enjoys.

Employers, who in general are small business owners, find themselves being outbid on work where independent contractor status exists, due in large part to the fact that taxes and insurance costs add to the bottom line only to be undermined by a scofflaw competitor not playing fair. Businesses that play by the rules are put at a disadvantage because their cost of doing business is higher.

The State loses revenue through uncollected workers compensation funds, unemployment insurance, social security, federal and state taxes. Wisconsin residents bear the brunt of hidden costs due to workers who are not covered by workers compensation while injured on the job. We all share in the cost of the uninsured.

Thank you for the opportunity to speak today regarding SB 669. I hope we have earned your support. I will be happy to answer any questions you may have.

## **International Union of Painters and Allied Trades, District Council No. 7**

### Misclassification of Workers in the Drywall Finishing and Painting Trades

This bill before you will not solve all of the problems relating to the issue of worker misclassification, in fact much more needs to be done, but it is a step in the right direction. It takes aim at eliminating the worst violations in our industry; drywall finishing and painting which also happens to be the most notorious for these practices

Basically this is an issue of fairness; the two trades most affected by worker misclassification drywall finishing and painting are excluded from current state regulations. We just want to be included with what is already on the books and in fact go farther than that to really start addressing the problem. We want the same playing field for all contractors because misclassification of workers raises the cost of doing business for legitimate contractors

The Report of the Worker Misclassification Task Force which was submitted to the Wisconsin Department of Workforce Development (DWD) in June of 2009 outlines the issue very concisely which I would like to briefly summarize:

“Worker misclassification is the practice of employers wrongfully identifying workers who should be treated as employees as “independent contractors.” These workers are denied the protection of workers compensation and unemployment insurance. Companies that misclassify workers avoid paying unemployment and withholding taxes and purchasing worker’s compensation insurance. Misclassification by employers puts them at an unlawful competitive advantage over employers who play by the rules and pay these costs as the law requires” It is estimated that in construction alone 14% to 26% of contractors misclassify their employees.

The report further details several practices related to misclassification which are common in the “underground economy” such as paying workers in cash and not recording names of employees so that there are no names to refer back to if an audit is performed.

In Dane County, for example we have seen several paint companies appear every spring and summer, advertise and recruit very heavily for workers who believe they are actually getting a job but in reality they are misled and they are actually classified as independent contractors forgoing any opportunity of unemployment when they are laid off due to seasonality and risking injury without the safety net of workmen’s comp to fall back on if they are injured while at work.

The problem is worse in the drywall industry. We believe these companies, as noted in the Misclassification Task Force Report, “employ illegal workers” who are simply being preyed upon by unscrupulous contractors for close to slave wages. Again, this has become very apparent in Dane County over the last few years. A good example is occurring right now on Dane County’s Badger Prairie project where we have several drywall companies performing work and only one was listed on the original project sub list. The drywall work has been subbed out at least three times at last count. Payroll reports do not seem to match the number of workers actually on the job site.

By labeling employees independent contractors, subcontracting out to other entities, or paying workers off the books in cash, businesses stand to gain upwards of 30% of payroll and related taxes otherwise paid for "employees." Employees miss out on unemployment insurance, workers compensation, and fair pay rules. These cost saving practices undercut the competitiveness of law-abiding businesses.

The costs to states in terms of lost revenue, workers compensation, and unemployment insurance associated with worker misclassification are shocking and surprisingly, not well reported upon.

- In 2008 Michigan reported that it lost 129 million in Social Security taxes, unemployment tax and federal and state income taxes.
- A 2007 report from New York stated that the estimated loss to workers compensation premiums due to worker misclassification amounted to between \$500 million and 1 billion annually.
- In 2005 Illinois estimated that misclassification of workers resulted in a \$53.7 million loss of unemployment insurance taxes and a \$149 million to \$250 million loss of income tax, and that \$97.9 million in workers' compensation premiums were not properly paid in 2004.
- In 2005 in Maine, it was estimated that for a typical year from 1999-2002, misclassification of workers in the construction industry resulted in an \$11,729,009 loss of federal and state tax revenues.

During 2007-2008, at least five states enacted statutes aimed at independent contractor problems, while more than twenty states introduced bills in their legislatures. Minnesota and Illinois have already passed independent contractor misclassification legislation. If we do not increase our efforts to address the problem now, Wisconsin will increasingly become a magnet state for contractors from neighboring states seeking to evade recently enacted laws.

There are hidden costs associated with this issue that need to be mentioned also. Because workers are classified as independent contractors, if they are hurt on a job site which is all too common, they are not covered under workman's compensation insurance so they seek medical treatment for injuries which should be covered under workman's comp but are not. Most of these workers have no health insurance which again increases the burden on contractors and the rest of us who ultimately bear the cost of the uninsured.

Immediate help is required right now. Our contractors are hurting and some of these small businesses will fail unless we do something soon. Businesses failing will mean more workers claiming unemployment, burdening an already overburdened system. This just perpetuates a vicious cycle we have seen with our members who have not only lost jobs due to the recession but are prevented from retuning to work because our contractors cannot compete against these so called independent contractors.